

## REMARKS

In the Final Office Action<sup>1</sup> mailed February 28, 2007, the Examiner rejected claims 1, 3, 4, 6, 8, 9, 11, 12, and 14 under 35 U.S.C. § 112, second paragraph, rejected claims 1, 3, 4, 6, 8, 9, 11, 12, and 14 under 35 U.S.C. § 101; rejected claims 1, 3, 6, 8, 9, 12, and 14 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,167,383 to Henson ("*Henson*"); rejected claim 4 under 35 U.S.C. § 103(a) as being unpatentable over *Henson* in view of U.S. Patent No. 5,974,395 to Bellini et al. ("*Bellini*"); and rejected claim 11 under 35 U.S.C. § 103(a) as being unpatentable over *Henson* in view of U.S. Patent No. 6,188,989 to Kennedy ("*Kennedy*").

By this Amendment, Applicant amends claims 1, 3, 9, 11, and 14.

Applicant respectfully traverses the rejection of claims 1, 3, 4, 6, 8, 9, 11, 12, and 14 under 35 U.S.C. § 112, second paragraph, as being indefinite.

Regarding claim 1, the Examiner states that the feature "apparatus" has "no physical structure" (Final Office Action at p. 2). The Examiner also states that "it is unclear how a series of programs can constitute an apparatus." According to the Examiner this rejection is based on "the analysis given below in the rejection under 35 U.S.C. § 101."

Applicant respectfully disagrees. Claim 1 recites structure in means-plus-function format as provided in 35 U.S.C. § 112, sixth paragraph. The rejected claims are thus clear and definite.

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<sup>1</sup> The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

Applicant respectfully traverses the rejection of claims 1, 3, 4, 6, 8, 9, 11, 12, and 14 under 35 U.S.C. § 101.

The Examiner states, “the apparatus of claim 1 comprises a series of programs” and further states, “a program is not a physical structure, and therefore the apparatus of claim 1 has no physical structure” (Final Office Action at p. 3). Applicant respectfully disagrees.

Claim 1 recites a commodity selling apparatus for accepting an order of a commodity responsive to a request by a costumer to purchase the commodity over a network and for directly shipping the ordered commodity to the customer. Claim 1 recites means or performing a function as specified in 35 U.S.C. § 112, sixth paragraph. An exemplary structure of the claimed apparatus is disclosed on page 34 of Applicant’s specification (describing Fig. 5). The disclosed structure includes a server 120 and a computer 160. A server and a computer each include at least one processor and a memory. The specification thus discloses structure, including hardware and software, for performing the claimed functions.

Furthermore, the claimed “order acquisition means” performs a function “for acquiring the order information, prepared on accepting the request to purchase the commodity from the customer, over the network.” Page 17, line 4 to page 18, line 2 of Applicant’s specification discloses a server of the circulation management center 12 executing instructions to acquire order information.

The claimed “related commodity information transmission means” performs a function for “commanding the shipping of the commodity ordered to the customer based

on the order information acquired by the said order information acquisition means.”

Figure 19 depicts a server furnishing commodity information to a customer 103K.

The claimed “commodity shipping means” performs a function for “commanding the shipping of the commodity ordered to the customer based on the order information acquired by the said order information acquisition means.” Page 18 (at lines 3-5) of Applicant’s specification discloses a server executing instructions to send a command for shipping ordered goods and destination information to the manufacturing plant 14.

Accordingly, contrary to the Examiner’s assertions (Final Office Action at p. 3), Applicant respectfully submits that claim 1 and dependent claims 3, 4, 6, 8, 8, 11, 12, and 14 define a statutory product within the definition of 35 U.S.C. § 101.

Applicant respectfully traverses the rejection of claims 1, 3, 6, 8, 9, 12, and 14 under 35 U.S.C. § 102(e) as being anticipated by *Henson*. *Henson* does not disclose or suggest each and every element of those claims. For example, claim 1 recites a commodity selling apparatus comprising, among other things:

proposed-order determining means for determining a proposed order including a list of one or more related commodities determined to be connectable to the commodity based on related commodity information associated with the commodity, said related commodity information including purpose information, specifying the purpose of using or purchasing the commodity.

*Henson* discloses a web-based online store including a configurator, a cart, a checkout, and a database, in which a user interface of the online store enables a custom configuration of a computer system according to an identification of a user belonging to a prescribed customer set. For example, *Henson* (at Fig. 3A), discloses a system for providing customer configured machines at an Internet site. A configurator in *Henson* includes, at col. 5, lines 1-2, a validation (or compatibility) warning module,

which provides the customer with a validation message when the options selected for a particular system are not correct (see col. 7, lines 57-61).

*Henson* also discloses, at col. 9, lines 55-57, providing recommendations based upon contents of the “shopping cart,” including something that could be recommended as an “upgrade” or a “cross-sell.” According to *Henson*, the presentation of merchandising messaging may be “active,” which depends upon the contents of the shopping cart, specific to a particular user or “passive,” which does not consider what is in the shopping cart. *Henson* further discloses, at col. 10, lines 11-13, advertising “add-ons to the computer system, extended warranty service, software, hardware, printers or other devices.”

Because *Henson* merely discloses providing recommendations for “upgrading” or “cross-selling” articles already selected by the customer and placed in the shopping cart, *Henson* does not disclose proposed-order determining means for determining a proposed order including a list of one or more related commodities determined to be connectable to the commodity based on related commodity information associated with the commodity, said related commodity information including purpose information, specifying the purpose of using or purchasing the commodity, as recited in claim 1.

For at least the foregoing reasons, Applicant submits that claim 1 is not anticipated by *Henson*. Claims 3, 6, 8, 9, 12, and 14 depend from independent claim 1 and are therefore allowable for at least the same reasons as independent claim 1. In addition, the dependent claims may recite unique combinations that are neither taught nor suggested by prior art.

Applicant respectfully traverses the rejection of claim 4 as being unpatentable over *Henson* in view of *Bellini*, because a *prima facie* case of obviousness has not been established with respect to claim 4. *Henson* and *Bellini*, either taken alone or in any reasonable combination, do not teach or suggest proposed-order determining means for determining a proposed order including a list of one or more related commodities determined to be connectable to the commodity based on related commodity information associated with the commodity, said related commodity information including purpose information, specifying the purpose of using or purchasing the commodity, as recited in independent claim 1.

*Henson* fails to disclose an apparatus having the claimed proposed-order determining means as recited in claim 1. *Bellini* also fails to disclose the claimed apparatus. According to the Examiner, *Bellini* discloses a commodity selling apparatus (Final Office Action at p. 9). However, *Bellini* does not disclose proposed-order determining means for determining a proposed order including a list of one or more related commodities determined to be connectable to the commodity based on related commodity information associated with the commodity, said related commodity information including purpose information, specifying the purpose of using or purchasing the commodity, as recited in claim 1. Therefore, the subject matter of claim 4 would not have been obvious to one of ordinary skill in the art in view of *Henson* and *Bellini*.

Applicant respectfully traverses the rejection of claim 11 under 35 U.S.C. § 103(a) as being unpatentable over *Henson* in view of *Kennedy*. Even if combinable as suggested by the Examiner, *Henson* and *Kennedy* fail to disclose or suggest the claimed subject matter. For example, *Henson* and *Kennedy*, either taken alone or in

combination, do not teach or suggest proposed-order determining means for determining a proposed order including a list of one or more related commodities determined to be connectable to the commodity based on related commodity information associated with the commodity, said related commodity information including purpose information, specifying the purpose of using or purchasing the commodity. *Henson* fails to disclose a commodity selling apparatus as recited in claim 1.

*Kennedy* does not cure the deficiencies of *Henson*. According to the Examiner, *Kennedy* discloses, at col. 2, lines 37-45, col. 3, lines 35-41, and col. 15, lines 38-46, "a commodity selling apparatus" (Final Office Action at p. 10). However, *Kennedy* does not disclose or suggest an apparatus comprising proposed-order determining means for determining a proposed order including a list of one or more related commodities determined to be connectable to the commodity based on related commodity information associated with the commodity, said related commodity information including purpose information, specifying the purpose of using or purchasing the commodity. Therefore, the subject matter of claim 11 would not have been obvious to one of ordinary skill in the art in view of *Henson* and *Kennedy*.

Applicant respectfully requests that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims 1, 3, 4, 6, 8, 9, 11, 12, and 14 in condition for allowance. It is respectfully submitted that the entering of the Amendment would allow the Applicant to reply to the final rejections and place the application in condition for allowance. Finally, Applicant submits that the entry of the amendment would place the

application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

In view of the foregoing remarks, Applicant submits that this claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicant therefore requests the entry of this Amendment, the Examiner's reconsideration of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

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By: 

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